DEC 13 2000 No. 00-24

In The

Supreme Court of the United States

PGA TOUR, INC.

Petitioner,

v.

CASEY MARTIN,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF PROTECTION AND ADVOCACY SYSTEMS, BAZELON CENTER FOR MENTAL HEALTH LAW, DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, AND 29 OTHER NATIONAL DISABILITY ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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American Therapeutic Recreation Association
The Arc of the United States
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Epilepsy Foundation®
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Justice For All
Learning Disabilities Association of America
National Alliance for the Mentally Ill
National Association for the Advancement of Orthotics and Prosthetics
National Association of Developmental Disabilities Councils
National Association of Protection and Advocacy Systems
National Center on Accessibility
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National Health Law Program
National Mental Health Association
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Polio Society
Self Help for Hard of Hearing People

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QUESTIONS PRESENTED

1. Whether the rules governing PGA Tour events are subject to the requirements of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*, which prohibits disability-based discrimination by operators of public accommodations.

2. Whether the district court properly held that waiver of the PGA Tour's "walking rule" would not "fundamentally alter" its competition.

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INTEREST OF THE *AMICI CURIAE*[1]

This case involves the scope and interpretation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*, which protects people with disabilities against discrimination by public accommodations. *Amici* are national organizations that advocate on behalf of people with disabilities. Because many of the members of these organizations have encountered discrimination in a variety of public accommodations settings, *amici* are concerned about the implications that this Court's decision will have for the range of cases brought under ADA Title III. (A description of each of the *amici* appears in Appendix A.)

STATEMENT

Casey Martin is a professional golfer. Pet. App. 16a. Martin has a condition known as Klippel-Trenaunay-Weber Syndrome, which has caused significant atrophy and weakening of his right leg. Pet. App. 2a, 16a. His condition causes him severe pain at all times, and "the simple act of walking" places him at significant risk of breaking his leg, bleeding, and developing blood clots. Pet. App. 16a-17a. Martin's condition has become more severe over time, to the extent that he is now physically unable to walk the course during a round of golf. Pet. App. 18a, 32a.

After playing on the varsity team at Stanford University, Martin sought to play professionally on the PGA Tour. A principal way in which golfers join the PGA Tour is through participation in the PGA's so-called "qualifying school tournament." Pet. App. 42a. That tournament is open to "[a]ny member of the public who pays a $3000

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[1] No counsel for any party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution to the preparation or submission of the brief. The parties' written consents to the filing of this brief are being lodged with the Clerk of the Court.

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entry fee and supplies two letters of recommendation." Pet. App. 7a; *id.* at 42a. It consists of three stages. In the first stage, golfers play 72 holes. Pet. App. 42a. Those who score well enough advance to the second stage, which also consists of a 72-hole competition. *Ibid.* About 170 players with the top scores in the second stage advance to the third stage, which consists of 108 holes. *Ibid.* The 35 players with the best scores in the third stage of the qualifying school tournament receive playing privileges on the PGA Tour. *Ibid.* The seventy remaining players with the best scores receive playing privileges on the Buy.com Tour – another professional golf tour operated by the PGA. *Ibid.* (At the time of the district court's opinion, the Buy.com Tour was known as the Nike Tour. See Pet. Br. 5.) Players on the Buy.com Tour may advance to the PGA Tour if they win three tournaments in a season or finish in one of the top 15 places on the Buy.com Tour money list. Pet. App. 42a. Tour golfers compete in tournaments for monetary prizes, but they are not guaranteed any payout. Tr. 815-817.

In the first two stages of the qualifying school tournament, the Tour permits players to use golf carts to carry them between shots. Pet. App. 42a. In the final round of that tournament, and in the tournaments that make up the PGA Tour and the Buy.com Tour, the PGA imposes a "walking rule": Contestants must walk between shots, and they must use caddies to carry their clubs. *Ibid.* This walking rule is not required by the official "Rules of Golf" promulgated jointly by the United States Golf Association and the Royal and Ancient Golf Club of St. Andrews, Scotland, but it forms a part of the supplemental "conditions of competition" imposed on PGA Tour and Buy.com Tour golfers. Pet. App. 30a.

In September of 1997, Martin paid the $3000 application fee, submitted the requisite letters of recommendation, and entered the qualifying school tournament. Pet. App. 42a. He performed well enough in the first and second stages of the tournament to advance to the final stage. *Ibid.* Because Martin's disability prevented him

from walking the course, he requested that the PGA waive the walking rule in the third stage of the qualifying school tournament. Pet. App. 3a. The NCAA and the Pac-10 athletic conference had provided Martin the same accommodation when he played intercollegiately. Pet. App. 11a n.8. But the PGA denied the request. Pet. App. 3a, 18a.

Martin then filed this lawsuit. He claimed, *inter alia*, that the PGA had violated Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*, by refusing to waive its walking rule to permit him to play. J.A. 94-95. The district court granted a preliminary injunction that directed the PGA to allow Martin to use a cart during the third stage of the tournament. Pet. App. 43a. The Tour complied by waiving the walking rule for all players who had reached the third stage. *Ibid.* Martin participated in the third stage, finished among the top 105 scorers, and accordingly qualified to play in what was then the Nike Tour. *Ibid.* By stipulation of the parties, the district court then extended the preliminary injunction to cover the tournaments in which Martin participated in the Nike Tour. *Ibid.*

The district court held a trial on the merits in February 1998 (J.A. 21-22), and issued its findings of fact and conclusions of law shortly thereafter. Pet. App. 16a-40a. The court first concluded that the rules governing those events were subject to Title III's "reasonable modification" requirement. Pet. App. 19a. It then went on to reject the PGA's defense that waiver of the walking rule would "fundamentally alter" its competitions. Pet. App. 19a-40a.

Accordingly, the district court entered a permanent injunction that required the PGA "to provide Plaintiff with automotive transportation in NIKE TOUR and PGA TOUR competitions in which plaintiff is eligible to participate." J.A. 90. The Ninth Circuit affirmed. Pet. App. 1a-15a.

SUMMARY OF ARGUMENT

I. Title III of the ADA protects any "individual" against disability-based discrimination "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations" of a public accommodation. 42 U.S.C. § 12182(a). By paying a $3,000 entry fee and submitting two letters of recommendation, Casey Martin sought to enjoy a variety of "goods, services, facilities, privileges, advantages, [and] accommodations" offered by the PGA Tour: reserving a location, gathering together other top competitors, setting ground rules to govern the competition, assembling an audience, and providing prize money to those who succeed in the competition. By its plain text, Title III forbade the Tour to discriminate on the basis of disability in these services.

The PGA concedes that Title III protects *spectators* at places of entertainment like the courses on which its tournaments are held, but it argues that Title III cannot protect *participants* in those tournaments. But case law under Title II of the Civil Rights Act of 1964 – the model for Title III of the ADA – decisively rejects that argument. See *Daniel* v. *Paul*, 395 U.S. 298, 306 (1969); *United States* v. *Slidell Youth Football Ass'n*, 387 F. Supp. 474 (E.D. La. 1974). The PGA plainly provides two different services to the public: To those who pay admission, it offers the opportunity to watch its tournaments; and to those who pay a $3,000 entry fee and submit two letters of recommendation, it offers the opportunity to participate in its tournaments. Title III prohibits disability-based discrimination against individuals in either of these groups. A contrary reading of the statute would have implications that go well beyond professional athletics and withdraw protection in a significant number of settings that Congress plainly intended to cover.

The PGA contends that a narrower reading is dictated by Congress's use of the words "client or customer" in a single sub-section of a Title III provision that is not at issue here. See 42 U.S.C. § 12182(b)(1)(A)(iv). But that language does not limit Title III's broad general rule. Nor is the PGA correct that application of Title III to Casey Martin effects an evasion of the limitations Congress imposed on the ADA's employment discrimination title, Title I, 42 U.S.C. § 12111 *et seq.* Title I provides the exclusive Americans with Disabilities Act cause of action for a dispute between a public accommodation and one of its "employees." But Martin is not an "employee" of the Tour, so Title I simply does not apply. The applicability of Title III to his case cannot turn on the textually unmoored inquiry into whether his is *really* a case of "workplace discrimination." *Cf.* Pet. Br. 26. Rather, it must turn on the inquiry required by Title III's text: whether Martin has been denied "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a). Martin plainly satisfied that test.

II. The district court properly held that waiver of the walking rule would not "fundamentally alter" PGA Tour golf. Contrary to the PGA's assertions, nothing in the district court's order requires a *selective* waiver of the walking rule. The district court ordered the Tour to permit Casey Martin to use a cart, but it did not bar the Tour from waiving its walking rule for all other golfers. Indeed, the Tour responded to the preliminary injunction by permitting *all* competitors in the third stage of the qualifying school tournament to use carts. If the district court's permanent injunction has led to disuniformity in the rules applied to PGA Tour competitors, that disuniformity is entirely of the Tour's making.

The PGA thus cannot defend the walking rule by invoking the interest in uniform rules. It must demonstrate that the walking rule is itself fundamental to the competition. 42 U.S.C. § 12182(b)(2)(A)(ii). Based on the unchallenged findings of the district court, it is evident that the Tour has failed to carry that burden.

Because they are tests of an arbitrarily defined set of skills, top-level professional sports are distinctive in ways

that relate to the fundamental alteration inquiry. In particular, courts lack any clear basis to second-guess a league's choices of *which* skills the competition should test or of *how much* those skills should matter to the outcome. In this respect, top-level professional sports are quite unlike many of the far more typical fact scenarios in which the ADA is applied. But the rules of such sports are not immune from the statutorily mandated fundamental alteration analysis. Courts must still assess whether a rule that excludes people with disabilities *in fact* tests the skills that the league purports to be testing. In many cases, of course, that determination can be expected to support the league's judgment. But the league nonetheless retains a statutory obligation to prove – by evidence and not speculation – a connection between the challenged rule and the skills it purports to test.

The district court found that "the fatigue factor injected into the game of golf by walking the course cannot be deemed significant under normal circumstances." Pet. App. 33a. That finding was supported by a significant amount of evidence presented at trial, the court of appeals did not disturb it, and the PGA does not contend that it was clearly erroneous. Instead, the PGA reads the district court's finding as necessarily implying that the walking rule *does* affect the outcome of golf competitions under some circumstances. Fairly read, the district court's finding contains no such implication, and this Court does not sit to supply missing factfindings through negative implication. See *Pullman-Standard* v. *Swint*, 456 U.S. 273, 291-292 (1982). In any event, the PGA's brief offers nothing but speculation and assertion to support the notion that walking-induced fatigue affects the outcome of golf competitions. Because the chance that the walking rule has an effect on competitive outcomes is speculative at best, the district court properly held that waiver of that rule would not effect a fundamental alteration.

ARGUMENT

I. Title III of the ADA Prohibits the PGA Tour From Discriminating on the Basis of Disability Against Individuals Who Compete in its Tournaments.

A. Individuals Who Compete in PGA Tournaments Obtain "Goods, Services, Facilities, Privileges, Advantages, or Accommodations" Offered by the PGA Tour.

Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*, prohibits disability-based discrimination in public accommodations. Title III begins by announcing a "general rule" (42 U.S.C. § 12182(a)):

> (a) General rule
>
> No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to) or operates a place of public accommodation.

The PGA does not deny that the golf courses on which its tournaments are held constitute "places of public accommodation." See 42 U.S.C. § 12181(7)(C) ("public accommodation" includes "place of exhibition or entertainment"), 42 U.S.C. § 12181(7)(L)("public accommodation" includes "golf course, or other place of exercise or recreation"). Nor does it deny that, on tournament days, it "operates" the golf courses and therefore must comply with the requirements of Title III. See 42 U.S.C. § 12182(a). The PGA contends, however, that Title III does not protect Casey Martin or any other competitor at its tournaments. According to the PGA, the statute protects only a limited class of people at a place of public entertainment such as a golf course hosting a PGA event: "the spectators and other attendees who are there to watch the tournament." Pet. Br. 22; see also USGA Br. 12. That

argument fundamentally misreads the statutory language.

The PGA Tour plainly provides two separate kinds of "goods, services, facilities, privileges, advantages, or accommodations" to the public. The first is the opportunity to view its tournaments – an opportunity the Tour provides to any member of the public who comes to the golf course and pays an admissions fee. The second is the opportunity to compete for a place in the tournament and ultimately for prize money before the audience assembled by the Tour – an opportunity the Tour provides to "[a]ny member of the public who pays a $3000 entry fee and supplies two letters of recommendation." Pet. App. 7a. By coordinating participation in, reserving a location for, and setting ground rules to govern the competition, the PGA creates the necessary preconditions for both participation in and viewing of a top-level athletic event. Cf. *NCAA* v. *Board of Regents*, 468 U.S. 85, 101-102 (1984) (athletic league's function of coordinating and setting rules for competition serves both fans and competitors). In arranging its tournaments, the PGA thus performs an important service *both* to its spectators *and* to its competitors (none of whom is employed by the PGA itself). By the plain text of the statute, the PGA is forbidden from depriving *either* of these classes of individuals of the full and equal access to these opportunities on the basis of disability.[2]

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[2] If the opportunity to compete for a place on the tour were "not in fact open to the public," 42 U.S.C. § 2000a(e) (setting forth so-called "private club" exemption under Title II of the Civil Rights Act of 1964), then Title III would not cover the PGA's practices governing participation in the competition. See 42 U.S.C. § 12187 (incorporating the exemption in 42 U.S.C. § 2000a(e) by reference). But the district court rejected the PGA's attempt to invoke this narrow exemption, Pet. App. 45a-51a, and the PGA has not challenged that ruling in the Ninth Circuit or here. Nor could the PGA reasonably challenge that ruling.

Cases interpreting Title II of the Civil Rights Act of 1964 – the model for Title III of the ADA[3] – have decisively rejected the contention that, at places of public entertainment, only spectators and not participants are protected against discrimination. In *Daniel* v. *Paul*, 395 U.S. 298, 306 (1969), this Court found "no support" for the argument that " 'place of entertainment' refers only to establishments where patrons are entertained as spectators or listeners rather than those where entertainment takes the form of direct participation in some sport or activity." Relying on *Daniel*, the court in *United States* v. *Slidell Youth Football Ass'n*, 387 F. Supp. 474, 482 (E.D. La.

This Court has made clear that an entity open to all members of the public who meet identified admissions prerequisites is "in fact open to the public" for purposes of 42 U.S.C. § 2000a(e). See *Runyon* v. *McCrary*, 427 U.S. 160, 172 n.10 (1976) (private schools were "in fact open to the public" because they "appeal[ed] to the parents of all children in the area who can meet their academic and admissions requirements") (internal quotation marks omitted). And by extending Title III coverage to "secondary, undergraduate, or post-graduate private school[s]," 42 U.S.C. § 12181(7)(J) – many of which impose far more selective criteria for admissions than the PGA imposes for determining access to its qualifying tournament – Congress plainly contemplated that the statute would cover institutions that applied quite stringent criteria to determine which members of the public would be allowed to participate in their programs.

[3] Like ADA Title III, Title II of the Civil Rights Act guarantees "full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation," 42 U.S.C. § 2000a(a), and extends to "place[s] of exhibition or entertainment," 42 U.S.C. § 2000a(b)(3). If anything, Congress intended the coverage of ADA Title III to be *broader* than that of CRA Title II, for the ADA's definition of "public accommodations" extends beyond the relatively narrow class of entities covered by the CRA. See H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. 35 (1990).

1974), held that Title II prohibited a youth football league from denying African-American children the opportunity to participate as players. Because its teams played before an audience of about 600 paying customers each week, see *id.* at 477, the court held that the league operated a place of entertainment, see *id.* at 483. The league did not discriminate against African-American spectators any more than the PGA has discriminated against spectators with disabilities here. See *id.* at 477 (African-Americans had been allowed to attend the league's games as paying spectators). But the court held that the league had nonetheless violated Title II by denying African-Americans the chance to play on its teams. See *id.* at 480-481. The same principle applies here. Regardless of whether the PGA allows all people with disabilities to attend its events as spectators, it is still forbidden from discriminating on the basis of disability in determining which members of the public may participate in its events as competitors.

By disregarding this point, the PGA's argument would artificially deprive people with disabilities of protection in a wide range of cases in which operators of public accommodations offer multiple "goods, services, facilities, privileges, advantages, or accommodations" to the public. An unpaid community orchestra that performs at a place of entertainment offers members of the community the opportunity both to attend its performances and to try out for positions in the orchestra. And many public accommodation operators essentially provide a place for sellers and consumers to meet. For example, a baseball card show that leases a "convention center . . . or other place of public gathering" (42 U.S.C. § 12181(7)(D)) may allow members of the public to rent tables so they can sell cards to other members of the public; flea markets and farmers' markets often have a similar structure. In such cases, both the sellers and the consumers enjoy the "services, facilities, privileges, advantages, or accommodations" of the place of public

accommodation: The consumers enjoy the opportunity to purchase goods from the sellers, and the sellers enjoy access to a pre-assembled market of consumers.

If, fearing the negative reactions of others, a community orchestra were to deny a violinist with a serious skin disease the opportunity to audition and play or a baseball card show were to refuse to rent a table to a potential seller with the same disability, those individuals would be denied "full and equal enjoyment" of the "services, facilities, privileges, advantages, [and] accommodations" of a public accommodation. Title III's plain text would protect those individuals with disabilities, and Congress clearly sought to prohibit discrimination in circumstances just like these. See, *e.g.*, 42 U.S.C. § 12101(a)(3) (congressional finding that "discrimination against individuals with disabilities persists in such critical areas as," *inter alia*, "recreation"); H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. 35 (1990) (justifying the drafters' decision to include a wide range of facilities under Title III's "public accommodations" definition by referring to the then-Attorney General's statement "that we must bring Americans with disabilities into the mainstream of society – 'in other words, full participation in and access to all aspects of society' "). But the PGA's position would improperly deprive those individuals of protection.

The PGA may be correct that no Member of Congress specifically contemplated that the same principles would apply to members of the public who, like Casey Martin, try out for and seek to play in a top-level professional athletic league. But "the fact that a statute can be 'applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.' " *Pennyslvania Dep't of Corrections* v. *Yeskey*, 524 U.S. 206, 212 (1998) (quoting *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 499 (1985)) (internal quotation marks omitted). Because the plain text of Title III reaches any "individual" who seeks the "goods, services, facilities, privileges,

advantages, or accommodations of any place of public accommodation," 42 U.S.C. § 12182(a), and because Casey Martin is such an individual, he may properly invoke the statute's protection.

B. The "Client or Customer" Language Does Not Limit the Broad Coverage Afforded by the Text of Title III's General Rule.

The plain language of Title III's general rule protects any "individual" from discriminatory deprivation of *any* "goods, services, facilities, privileges, advantages, or accommodations" offered by a place of public accommodation. 42 U.S.C. § 12182(a). That language makes clear that statutory coverage is not limited to mere spectators or passive recipients of services; Title III also protects members of the public who actively engage in other types of participatory opportunities offered by the public accommodation. In the face of that broad language – which plainly reaches Casey Martin's situation – the PGA relies on a different provision of Title III to contend that statutory protection is limited to a public accommodation's "clients or customers," 42 U.S.C. § 12182(b)(1)(A)(iv) – a term that the PGA appears to read as encompassing only consumers in a marketplace transaction. Pet. Br. 18-22.

As an initial matter, the PGA's suggestion that Title III protection extends only to consumers who purchase goods and services in the marketplace is difficult to reconcile with Title III's broad coverage. The statute reaches many types of entities that frequently do not offer their "goods, services, facilities, privileges, advantages, or accommodations" in marketplace transactions at all. Examples specifically listed in the statute include: "lecture hall," 42 U.S.C. § 12181(7)(D); "museum, library, gallery, or other place of public display or collection," 42 U.S.C. § 12181(7)(H); "park, zoo," 42 U.S.C. § 12181(7)(I); and "senior citizen center, homeless shelter, food bank," 42 U.S.C. § 12181(7)(K). The statute also reaches other

entities – notably "a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education," 42 U.S.C. § 12181(7)(J) – for which the marketplace characterization is awkward at best. The PGA is thus incorrect to say that "[t]he subject to which Title III is addressed is discrimination in the marketplace." Pet. Br. 10.

Nor does the PGA's reliance on the "client or customer" language advance its argument. The words "client or customer" neither purport to limit nor suggest any particular intent to limit the class of individuals who are protected under Title III's general rule. To the contrary, their plain meaning embraces any individual who seeks any "goods, services, facilities, privileges, advantages, or accommodations" that the defendant offers the public.[4] In other words, they embrace any individual who is covered under the broad plain language of Title III's general rule.

The placement of the "client or customer" language in the statute makes this reading apparent. After establishing Title III's "general rule" in 42 U.S.C. § 12182(a), the statute proceeds, in the balance of § 12182, to set forth a number of more specific prohibitions encompassed by that rule. One of those more specific prohibitions is set forth in three successive subsections, § 12182(b)(1)(A)(i) through (A)(iii). Among other things, these subsections bar covered entities from *indirectly* discriminating (that is, effectuating discrimination through contractual arrangements with third parties) against an "individual or class of individuals" seeking "goods, services, facilities, privileges, advantages, or accommodations." 42 U.S.C.

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[4] See Webster's Third New Int'l Dictionary 559 (1993) (defining "customer" to include "one that patronizes *or uses the services*") (emphasis added); *id.* at 422 (defining "client" to include "a person who engages the professional advice or services of another" and "a person served by or utilizing the services of a social agency or a public institution").

§ 12182(b)(1)(A)(i)-(iii). The "client or customer" language appears in a subsection that emphasizes the limited scope of the additional obligations imposed by this prohibition against indirect discrimination: "For purposes of clauses (i) through (iii) of this subparagraph, the term 'individual or class of individuals' refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing, or other arrangement." 42 U.S.C. § 12182(b)(1)(A)(iv).

This provision makes clear that a public accommodation operator is liable for indirect discrimination only when that discrimination affects individuals who seek the "goods, services, facilities, privileges, advantages, or accommodations" of the public accommodation itself; the operator is not liable for discrimination that affects only those people who seek the "goods, services, facilities, privileges, advantages, or accommodations" of its contracting partner. The key words in this provision therefore are not "client or customer" (which is merely a shorthand reference for "individual seeking the goods, services, facilities, privileges, advantages, or accommodations") but rather "of the covered public accommodation" (which identifies *whose* clients or customers a public accommodation operator must protect against indirect discrimination). The legislative history makes this point crystal clear.[5]

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[5] *See* H.R. Rep. No. 485, Pt. 2, at 101 (1990) ("[T]he 'individual or class of individuals' referenced in section 302(b)(1)(A)(i)-(iii) has always been intended to refer to the clients and customers of the public accommodation that entered into a contractual arrangement. The section has never been intended to encompass the clients or customers of other entities. Thus, a public accommodation is not liable under this provision for discrimination that may be practiced by those with whom it has a contractual relationship, when that discrimination is not directed against its own clients or customers.").

By paying the entry fee and submitting two letters of recommendation, Casey Martin sought to avail himself of the PGA's "services, facilities, privileges, advantages, or accommodations" in coordinating the golf competition, providing an opportunity to compete, and assembling an audience. He therefore became a "client or customer" of the Tour within the meaning of Title III.

C. The Application of ADA Title III to This Case Does Not Conflict With Any Limitations on the Reach of ADA Title I.

The PGA contends that Martin's claim is essentially one for "workplace discrimination." Pet. Br. 26. Because Martin is not a common-law "employee," it is clear that he may not invoke the protections of ADA Title I, which provides a range of remedies (including back pay and, in many circumstances, damages) for disability-based employment discrimination. See 42 U.S.C. § 12111 *et seq.* But the PGA takes the point a step further. Because, it contends, Martin's claim is best characterized as a "workplace dispute" (Pet. Br. 27), the PGA argues that Martin may not invoke the protection of Title III (which provides private plaintiffs injunctive but not monetary relief for disability-based discrimination by public accommodations, see 42 U.S.C. § 12188(a)(1)).

The PGA is correct that Title I – which specifically and extensively addresses the treatment of "employees" in the terms and conditions of employment – creates the exclusive Americans with Disabilities Act cause of action for disability discrimination by a place of public accommodation against one of its employees.[6] Where the plaintiff is not an employee of the defendant, however, Title I

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[6] Thus, a reading that extends Title III protection to Martin does not threaten to extend the Act's prohibitions on employment discrimination to businesses with fewer than 15 employees. Cf. Pet. Br. 28-29 & n.22. Because Title I is the sole

simply does not apply. In such circumstances, the availability of a claim under Title III cannot turn on the textually unmoored and essentially standardless inquiry into whether the plaintiff's claim is *really* one of "workplace discrimination." Rather, it must turn on the inquiry required by Title III's text: Whether the plaintiff has been denied equal access to "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a).

For these purposes, it is irrelevant that, in seeking access to the PGA Tour's "goods, services, facilities, privileges, advantages, or accommodations," Martin hopes to meet with enough success in competition to make a living. Professional gamblers frequently seek to use the services of casinos and racetracks – which are clearly "place[s] of . . . entertainment," 42 U.S.C. § 12181(7) – with a similar goal, as do sellers at baseball card shows and flea and farmers' markets. Nothing in the statutory text or legislative history suggests that a place of public accommodation should be free to discriminate against these individuals on the basis of disability simply because they hope to use the accommodation's services to earn a living.

Contrary to the argument of the PGA and its *amicus* (Pet. Br. 27; EEAC Br. 13-14), Martin's case is a far cry from that of a typical contractor or vendor who agrees to provide a defined set of goods or services to the operator of an accommodation in exchange for a defined payment. Unlike such an individual, Martin paid a $3000 fee and participated in an essentially open competition to obtain

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ADA provision that prohibits discrimination by a place of public accommodation against one of its "employees," its limitation to employers who have 15 or more employees necessarily reflects a determination *not* to regulate the relationships that smaller employers have with their employees.

the variety of "services, facilities, privileges, advantages, or accommodations" inherent in participation in PGA Tour events: the assembly of a top-flight field of competitors; the coordination of play at an agreed-upon location under an agreed-upon set of rules; access to an audience assembled by the tour; and the opportunity, *should he be successful in the competition* (see Tr. 815-817), to obtain prize money. Title III prohibits the Tour from denying these benefits to Martin on the basis of his disability.

II. The District Court Properly Held That Modification of the "Walking Rule" Would Not "Fundamentally Alter" PGA Tour Golf.

A. Title III Required the PGA to Demonstrate That Its Insistence on the Walking Rule Was Necessary to Serve a "Fundamental" Purpose of the Tour.

Some of the most significant burdens on people with disabilities take the form of longstanding practices that, without any particular design, exclude people with disabilities from important activities. These practices often continue simply because they reflect the "way things have always been done." See *Alexander* v. *Choate*, 469 U.S. 287, 295-296 (1985) (observing that Congress described the problem of discrimination against people with disabilities as largely one of "thoughtlessness and indifference" and "apathetic attitudes"). To combat this important form of exclusion, the ADA aims centrally to compel *all* of the entities it regulates – places of public accommodation as well as private employers and state and local government entities – carefully to scrutinize those practices that exclude people with disabilities. Title III thus defines "discrimination" to include (42 U.S.C. § 12182(b)(2)(A)(ii)):

> a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such

> goods, services, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.[7]

By requiring "reasonable modifications" that alter, but do not "fundamentally" alter, the nature of a public accommodation's operations, Title III requires a close examination of practices that operate to exclude individuals with disabilities. This examination must necessarily be fact-specific, and it must contain several components. First, the challenged practice must *in fact* serve the purposes for which the public accommodation imposed it in the first place. If the practice no longer serves that purpose, and is being continued simply because of inertia, modification could not effect a "fundamental alteration." See *Southeastern Community Coll.* v. *Davis*, 442 U.S. 397, 412 (1979) ("insistence on continuing past requirements" would discriminate on the basis of disability where it "arbitrarily deprive[s] genuinely qualified handicapped persons of the opportunity to participate in a covered program").

Even if the challenged practice serves *some* legitimate purpose of the public accommodation, it must be modified if reasonable alternatives exist that would permit an

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[7] ADA Title II, which regulates state and local government entities, also contains a requirement of "reasonable modifications" subject to a "fundamental[ ] alter[ation]" defense. 28 C.F.R. § 35.130(b)(7). ADA Title I, which regulates employers, similarly requires "reasonable accommodations" subject to an "undue hardship" defense. 42 U.S.C. § 12112(b)(5)(A). Although Title I's "undue hardship" defense differs somewhat from the "fundamental alteration" defense applied under Titles II and III, the core requirements of "reasonable accommodation" and "reasonable modification" are essentially the same.

individual with disabilities access without compromising that purpose. It might be possible to alter the practice for *all* people with a given disability without impairing its underlying purpose.[8] Alternatively, it may be the case that alteration of the practice for a given individual with a disability will, for reasons specific to that individual's particular circumstances, be consistent with the practice's underlying purpose.[9] And even if no alternative way of serving a legitimate purpose exists, the plain text of the statute makes clear that the practice may still be modified if the purpose itself is not "fundamental" to the public accommodation's operations.

These inquiries would be entirely frustrated if entities covered by the ADA could simply define the "fundamental" nature of their programs as encompassing the precise set of policies, practices, and procedures that they currently impose. In its jurisprudence under the Rehabilitation Act, this Court has made clear that defendants may not evade the reasonable modification requirement through such definitional fiat. See *Choate*, 469 U.S. at 301 & n.21 (stating that "[t]he benefit itself, of course, cannot

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[8] *See, e.g., Crowder* v. *Kitagawa*, 81 F.3d 1480, 1485-1486 (9th Cir. 1996) (although rule requiring quarantine of all dogs arriving from out of state served the legitimate interest in keeping Hawaii rabies-free, Title II's "reasonable modifications" requirement compelled consideration of whether alternative measures could serve the same purpose without effectively preventing people with visual impairments who use guide dogs from traveling to the state).

[9] *See, e.g., Washington* v. *Indiana High Sch. Athletic Ass'n, Inc.*, 181 F.3d 840, 852 (7th Cir.) (upholding preliminary injunction requiring waiver of high school athletic association's 8-semester eligibility rule for a student with a learning disability based in part on a determination that, due to the specifics of the student's situation, "none of the dangers that motivated adoption of the rule is present in this case"), cert. denied, 120 S. Ct. 579 (1999).

be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled"); see also 42 U.S.C. § 12201(a) (ADA must be interpreted to provide at least as much protection as the Rehabilitation Act); *Bragdon* v. *Abbott*, 524 U.S. 624, 631-632 (1998) (same).[10] The PGA thus cannot avoid a defense of its walking rule simply by defining PGA Tour golf as a game in which competitors walk between shots. It must "demonstrate[ ]" that a modification of that rule will "fundamentally alter" the nature of its operations under the standards set forth above. 42 U.S.C. § 12182(b)(2)(A)(ii).

B. The District Court Properly Concluded That Insistence on the Walking Rule Was Unnecessary to Serve Any "Fundamental" Purpose of the PGA Tour.

1. The PGA contends that modification of the walking rule effects a fundamental alteration by compromising its interest in imposing "a uniform set of substantive rules" on all of its competitors. Pet. Br. 31. The PGA's repeated references to the need for "uniform rules," "the same rules," and "common rules" (see Pet Br. 30, 31, 32-33, 34, 35, 36) reflect a basic misreading of the injunction issued by the district court and affirmed by the court

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[10] Congress made the same point clear in the parallel ADA provisions that guarantee "reasonable accommodations" to employees with disabilities so long as the accommodations do not compromise "essential" job functions. See 42 U.S.C. §§ 12111(8), 12112(b)(5)(A). While the "employer's judgment as to what functions of a job are essential" is entitled to "consideration," 42 U.S.C. § 12111(8), Congress pointedly accorded no deference or presumptive weight to that judgment, see H.R. Rep. No. 485, Pt. 3, 101st Cong., 2d Sess. 33 (1990) ("An amendment that would have created a presumption in favor of the employer's determination of essential functions was rejected.").

of appeals. The district court ordered the PGA "to provide Plaintiff with automotive transportation in NIKE TOUR and PGA TOUR competitions." J.A. 90. But nothing in that order prevents the Tour from waiving its walking rule for all other competitors. Indeed, the PGA responded to the district court's preliminary injunction by lifting the walking rule uniformly for all golfers in the qualifying school tournament. Pet. App. 43a. If the district court's *permanent* injunction has led to disuniformity in the rules applied to PGA Tour competitors, that disuniformity is entirely of the Tour's making.

Because the PGA can satisfy its interest in uniformity by waiving the walking rule for all competitors, it cannot argue that the rule is necessary to serve that interest. Rather, it must rest on the contention that the walking rule is, considered on its own merits, a fundamental aspect of PGA Tour competition, such that elimination of the rule would constitute a "fundamental[ ] alter[ation]." 42 U.S.C. § 12182(b)(2)(A)(ii). Evaluation of this argument requires consideration of the distinctive aspects of top-level professional athletic competition.

2. As the PGA forcefully contends (Pet. Br. 32-33), top-level professional sports are distinctive in respects that relate to the fundamental alteration inquiry. At the outset, however, two key respects in which top-level professional athletics are *not* distinctive bear emphasis.

First, although top-level professional sports leagues have traditionally been accorded broad authority to craft – and resolve disputes concerning – their rules (cf. ATP Br. 7-8), that fact hardly distinguishes those leagues from a wide range of other entities whose conduct is regulated by the ADA. Employers, for example, traditionally had the unquestioned managerial prerogative to define job functions and set work rules for all employees, but Title I's "reasonable accommodation" requirement necessarily overrides that prerogative. 42 U.S.C. § 12112(b)(5)(A). Moreover, many of the persons who are subject to the

requirements of ADA Title III are members of professions that traditionally have a significant degree of autonomy over the practices they follow. But this Court has rejected broad deference either to the judgments of individual professionals, see *Bragdon*, 524 U.S. at 649, or to the professional organizations of which they are members, see *id.* at 652.

Even when this Court has accorded a measure of deference to the judgments of nonjudicial bodies on questions associated with "reasonable modification," it has never deferred to the judgments of defendants as such. It has deferred only to identified professionals who, because of their training and professional orientation, have an obligation (regardless of what the defendant instructs) to take seriously the interests of people with disabilities *as well as* the concerns raised by the defendant. In *School Bd.* v. *Arline*, 480 U.S. 273, 287-288 (1987), this Court held that courts "normally should defer to the reasonable medical judgments of public health officials" on safety risk questions, in order to "protect[ ] handicapped individuals from deprivations based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to such legitimate concerns of grantees as avoiding exposing others to significant health and safety risks." See also *Bragdon*, 524 U.S. at 650 (reaffirming this aspect of *Arline* but noting that the views of public health officials "are not conclusive"). In *Olmstead* v. *L.C.*, 527 U.S. 581, 602-603 (1999), the Court stated that "the State generally may rely on the reasonable assessments of its own professionals in determining whether an individual meets the essential eligibility requirements for habilitation in a community-based program" – a statement necessarily premised on the expectation that those treating professionals exercise their own independent judgment based on knowledge and experience concerning both the individual with a disability and the ability of community placement to serve that individual. Because

sports leagues have no obligation, independent of the ADA, to safeguard the interests of people with disabilities,[11] there is no basis for according them even the moderate degree of deference that this Court has granted to public health officials and treating professionals in other contexts – particularly in a case, such as this one, where the league itself is the defendant.

Second, the mere fact that a covered entity must conduct an individualized inquiry to determine what modifications are necessary to provide the plaintiff access in the light of his particular condition is hardly unique to the professional sports context. Such an individualized inquiry is the basic point of the reasonable accommodation/reasonable modification requirement. See *Arline*, 480 U.S. at 287 & nn.16-17. The statutory text makes this clear: Public accommodations must provide reasonable modifications where those modifications are "necessary to afford" its opportunities to "*individuals* with disabilities." 42 U.S.C. § 12182(b)(2)(A)(ii) (emphasis added); see also 42 U.S.C. § 12112(b)(5)(A) (ADA Title I requires "reasonable accommodations to the known physical or mental limitations of *an* otherwise qualified *individual* with a disability") (emphasis added). If the burden of conducting individualized inquiries sufficed to work a fundamental alteration (cf. USGA Br. 25), the core aspect of the reasonable accommodation/reasonable modification requirement would be entirely eviscerated.

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[11] Professional athletic leagues have not always been reliable in effectuating the principles of our civil rights laws. See Paul C. Weiler, Leveling the Playing Field: How the Law Can Make Sports Better for Fans 18-19 (2000) (describing historical treatment of African-Americans by sports leagues and noting that "it was not until the early 1960s, when Congress was preparing to subject *private* organizations to a new Civil Rights Act, that the PGA relented and gave black golfers the right to play on the Tour").

3. Nonetheless, there are some respects in which alterations to the rules of top-level professional sports raise issues that are not present in the typical reasonable modification or reasonable accommodation case. In the typical case in which the plaintiff seeks such a modification or accommodation, the defendant's operations are the means to an end. An employer, for example, seeks to produce goods or provide services to paying members of the public. All work rules are intended to serve that ultimate goal of the enterprise. In a meaningful sense, however, top-level professional athletic competitions are not means to an end; they are an end in themselves.

Because the rules that determine the skills tested by the game are set in an essentially arbitrary manner, many of the inquiries that are relevant in other fundamental alteration cases are less appropriate in the top-level professional sports context. In a typical employment case, for example, an employee with a disability can attempt to prove that the employer should not demand of its warehouse workers the ability to carry more than fifty pounds at a time, because alternative means such as a hand truck exist to allow those workers to accomplish the tasks necessary for the employer. See, *e.g.*, EEOC, ADA Tech. Asst. Man. § I-3.8. In a typical case challenging testing practices, a test-taker with a disability can attempt to prove that the test, as currently structured, does not in fact evaluate him on the essential skills that it was designed to assess. See, *e.g.*, 28 C.F.R. § 36.309(b)(3). Because the skills a top-level professional sports league chooses to test are not means to any particularly defined end, however, courts lack any particular standard for second-guessing the league's choice of *which* skills tested by the competition's rules are truly essential, and *how*

much the competition's outcome should turn on a particular skill.[12]

The rules of top-level professional sports are not immune from the statutorily mandated reasonable modification and fundamental alteration analysis, however. In determining whether a rule that excludes people with disabilities serves a *fundamental* purpose, courts must assess whether that rule *in fact* tests the skills that the league purports to be testing. In many if not most cases involving rules of competition in top-level professional athletics, that determination can be expected easily to support the league's choice of rules. For example, one would expect that a professional basketball league's decision to set the basket 10 feet above the floor could plainly be shown to test leaping and jump-shooting skills; once that point was established, a court would have no basis for saying that the league should have tested those skills more (by setting the basket higher) or less (by setting it lower). But the fact that the league's burden of justification will in many cases be *easy* does not excuse the league from its statutory obligation to "demonstrate[ ]," 42 U.S.C. § 12182(b)(2)(A)(ii) that a proposed rule change would alter the skills the game tests. The league must carry this burden by presenting competent evidence and not mere speculation. Cf. *Bragdon*, 524 U.S. at 653-654 (speculative evidence insufficient to establish sufficient safety risk to justify disability-based discrimination).

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[12] These concerns are unique to top-level professional athletics. In recreational and scholastic sports, participatory and educational goals compete with the interest in determining a winner under a given set of rules. See, *e.g.*, *Washington*, 181 F.3d at 852 (upholding preliminary injunction requiring waiver of high school athletic eligibility rule on the ground that the waiver would, in the plaintiff's circumstances, be compatible with the educational purposes of the rule). Determination of the essentiality of a given skill to the sport is therefore far more appropriate.

Of course, elimination of any rule that excluded a person with a disability will have an effect on competitive outcomes by changing the field of competitors. If people with disabilities cannot play, they have no chance to win, so letting them play is obviously outcome-affecting in some sense. But a rule whose only effect on outcomes is to *exclude individuals from competing* rather than to *test the skills of those who are competing* cannot be "fundamental" to the competition. If, for example, the PGA required all golfers to wear a particular kind of shoe as a result of an endorsement deal, and that kind of shoe could not fit a person with a prosthetic foot, elimination of that requirement would affect competitive outcomes by permitting people with prosthetic feet to play. But such a modification would not affect the nature of the competition at all. It would merely eliminate a gratuitous exclusion of people with disabilities. Such gratuitous exclusions are precisely the type of conduct that Title III seeks to attack.

4. Applying these standards, it is evident that the district court correctly held that waiver of the walking rule would not effect a fundamental alteration. The district court's findings make clear that the walking rule *does not* test the skill that the Tour purports to be testing. Any effect that rule has on the outcome of competitions is speculative at best.

The district court found that the asserted "purpose of the walking rule is to inject the element of fatigue into the skill of shotmaking." Pet. App. 32a. The court did not second-guess the appropriateness of testing the skill of shotmaking under conditions of fatigue. See Pet. App. 33a (finding that such a purpose "is a cognizable purpose of the rule from the standpoint of the ADA") (footnote omitted). But it did review the evidence to decide whether the walking rule does *in fact* inject a fatigue factor into the game. Distinguishing between the "normal circumstances" (Pet. App. 33a) of other Tour competitors

and "Casey Martin's unique circumstances" (Pet. App. 35a),[13] the court found that "the fatigue factor injected into the game of golf by walking the course cannot be deemed significant under normal circumstances." Pet. App. 33a.

The court gave several reasons for this finding. It credited the expert testimony of a physiology professor who stated that a course of golf involves walking five miles over the course of five hours, with "numerous intervals of rest and opportunities for refreshment." Pet. App. 33a. The expert also testified that "fatigue at lower intensity exercise is primarily a psychological phenomenon." Pet. App. 34a. According to that expert, the prominent case of allegedly walking-induced fatigue relied upon by the PGA ("Ken Venturi's memorable 1964 U.S. Open win") resulted from "heat exhaustion and fluid loss – not walking." Pet. App. 33a. Moreover, the court found, "most PGA Tour golfers appear to prefer walking as a way of dealing with the psychological factors of fatigue." Pet. App. 34a. These findings make clear that the walking rule does not in fact serve as a test of the ability to overcome fatigue, and that it could be eliminated for all competitors without effecting a fundamental alteration. *A fortiori*, the relief ordered by the district court – requiring the PGA to waive the rule for Casey Martin but leaving it up to the Tour to decide whether to eliminate the rule for all other competitors – does not effect a fundamental alteration.

The court of appeals did not disturb these findings, and the PGA does not challenge them in this Court as clearly erroneous. Instead, the PGA reads the statement that "the fatigue factor injected into the game of golf by

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[13] The walking rule does not exclude Martin because it makes him so fatigued that his shotmaking suffers; it excludes him because he simply cannot walk the course. Pet. App. 9a, 18a 32a.

walking the course cannot be deemed significant under normal circumstances" (Pet. App. 33a) as necessarily implying that "the 'walking rule' *does affect* the outcome of some high-level golf tournaments." Pet. Br. 36 (emphasis in original). To the extent that the district court's findings are ambiguous on this point, the proper course for this Court is to remand rather than supply a missing factfinding by the device of negative implication. See *Pullman-Standard* v. *Swint*, 456 U.S. 273, 291-292 (1982). But the PGA's submission to this Court does not demonstrate that the walking rule has such an outcome-determinative effect on high-level golf tournaments in any event.

The PGA argues that some unspecified number of golfers without statutory "disabilities" are unusually likely to experience fatigue from walking and thus would benefit in the competition from being able to use a golf cart. PGA Br. 39-41. But that is nothing more than speculation. Nothing in the district court's findings – much less in the brief portion of the record cited by the PGA (PGA Br. 40 (citing J.A. 168-169, in which a single golfer testified that he experienced fatigue because of his diabetes)) – suggests that an across-the-board elimination of the walking rule would have any meaningful effect on the outcome of the competition.[14] The Tour can do nothing more than assert that some unidentified number of golfers with "bad backs, sore knees and ankles, arthritis,

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[14] The USGA states that waiver of the walking rule affected the outcome in at least one competition that Casey Martin won on the Nike Tour after the district court issued its order. USGA Br. 23-24 n.9. According to the USGA, Martin won a tournament by one stroke over an opponent who "was suffering from an ingrown toenail that caused him to suffer intense pain"; had the opponent been permitted to use a golf cart, the USGA asserts, "he might have improved his score by one or two strokes." USGA Br. 23 n.9. Like the assertions in the PGA's brief, this "might have" is entirely speculative.

[and] diabetes" (Pet. Br. 40) might do somewhat better *vis-a-vis* some of their fellow competitors if the walking rule were lifted. Because the chance that the walking rule has an effect on tournament outcomes is speculative at best, it cannot be said truly to test the skill of shotmaking under fatigue.

Given the entirely speculative effect that walking the course has on golfer fatigue, it is hardly surprising that the district court noted that Martin experiences far more pain and fatigue simply by getting in and out of his cart to walk to shots. See Pet. App. 36a. Contrary to the PGA's suggestion (Pet. Br. 39-41), this passage of the district court's opinion does not require the Tour to seek some kind of precise calibration between the advantage gained by a reasonable modification and the disadvantage imposed by the plaintiff's disability. Rather, the passage emphasizes that, should the Tour choose to limit waiver of the walking rule to Casey Martin, it would nonetheless be quite obvious that Martin would receive no competitive advantage. See Pet. App. 36a (noting that Martin "*easily* endures greater fatigue with a cart than his able-bodied competitors do by walking") (emphasis added); *ibid.* ("To perceive that the cart puts him – with his condition – at a competitive advantage is a gross distortion of reality."). Given the district court's unchallenged findings, the speculative nature of the PGA's assertion that the walking rule affects the competition, and the fact that the PGA remains free to eliminate the rule for all golfers, this "competitive advantage" point was unnecessary to the district court's decision. For in no event did the PGA carry its burden to "demonstrate[ ]" a "fundamental[ ] alter[ation]." 42 U.S.C. § 12182(b)(2)(A)(ii).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

Amici Descriptions

AARP is a nonprofit membership organization serving more than thirty-four million persons age 50 and older that is dedicated to addressing the needs and interests of older Americans. The protections of the American with Disabilities Act are especially important to AARP members because older persons have a higher incidence of disabilities than other populations.

ADAPT is a national organization, most of whose members have severe disabilities and have been institutionalized in nursing facilities and other public institutions solely because they have disabilities. ADAPT has a long history and record of enforcing the civil rights of people with disabilities and was one of the key organizations that participated in the political and legislative process that resulted in the passage in 1990 of the Americans with Disabilities Act.

The **American Association of People with Disabilities** (AAPD) is a non-profit, non-partisan membership organization of people with disabilities, their family members and supporters. AAPD was founded on the fifth anniversary of the Americans with Disabilities Act and works to promote policies and programs that further the ADA's goals of equality of opportunity, full participation, independent living and economic self-sufficiency for the more than 56 million children and adults with disabilities in the U.S.

The **American Council of the Blind** (ACB) is a national membership organization of blind and visually impaired persons and is dedicated to improving the quality of life, independence and equality of opportunity for

people who are blind and visually impaired. One key element of ACB's activities has been support for legislation that would enhance and protect the civil rights of persons with disabilities such as the Americans with Disabilities Act.

The **American Diabetes Association** is the nation's leading nonprofit health organization providing diabetes research, information and advocacy. The mission of the organization is to prevent and cure diabetes, and to improve the lives of all people affected by diabetes. As part of its mission, the Association advocates for the rights of people with diabetes and supports strong public policies and laws to protect persons with diabetes against discrimination.

The **American Network of Community Options and Resources** (ANCOR) is a nationwide association of 700 private, non-profit, for-profit and family care agencies that together provide support and services to more than 150,000 people with disabilities. Most member agencies support group homes, apartments, and other supported living arrangements in typical, stable family neighborhoods in order to best meet the needs of the people they support. Some members provide vocational and employment services through supported employment, community rehabilitation programs, and extended employment arrangements.

The **American Therapeutic Recreation Association** is the largest national membership organization representing the interests and need of recreational therapists. Recreational therapists are health care providers using

recreational therapy interventions for improved functioning of individuals with illness or disabling conditions.

The Arc of the United States (The Arc), through its nearly 1,000 state and local chapters, is the largest national voluntary organization in the United States devoted solely to the welfare of the more than seven million children and adults with mental retardation and their families. Since its inception, The Arc has vigorously challenged attitudes and public policy, based on false stereotypes, that have authorized or encouraged segregation of people with mental retardation in virtually all areas of life.

The **Association on Higher Education and Disability** (AHEAD) is a non-profit organization committed to full participation in higher education and equal access to all curricular and extra-curricular opportunities for persons with disabilities. Its membership includes approximately 2,000 institutions (including colleges, universities, not-for-profit service providers and standardized testing organizations), professionals, and college and graduate students planning to enter the field of disability practice.

The **Judge David L. Bazelon Center for Mental Health Law** is a national legal advocacy organization dedicated to advancing the rights and dignity of people with mental disabilities. The Center has worked to promote equal opportunity for people with mental disabilities to access housing, employment, services and recreational activities.

The **Brain Injury Association** (BIA) is a national non-profit organization whose mission is to create a better

future through brain injury prevention, research, education and advocacy. BIA's leadership represents a cross section of stakeholders in the field of brain injury, including survivors, family members, medical and clinical practitioners, researchers, and service providers. Since its inception, BIA has worked tirelessly to raise public awareness, prevent brain injury by education, improve treatments through professional education and research, and advocate for progressive change in the law.

The **Brain Injury Family Assistance Center** is committed to assisting individuals with Traumatic Brain Injuries and their families in dealing with the many problems caused by and associated with the injury, including but not limited to employment and access problems.

The **Center on Disability and Health** is a nonprofit health care policy think tank committed to applying nondiscrimination standards in the Americans with Disabilities Act to different components of the health care delivery system.

The **Disability Rights Education and Defense Fund** (DREDF) is a national law and policy center dedicated to advancing and protecting the civil rights of people with disabilities. Since its founding in 1979, DREDF has pursued its mission through education, advocacy and law reform efforts, consistently working to promote the full integration of citizens with disabilities into the American mainstream. DREDF is nationally recognized for its expertise in the interpretation of federal disability civil rights laws.

The **Epilepsy Foundation®** is the sole national charitable voluntary health organization dedicated to advancing the interests of the more than two million people with epilepsy and seizure disorders. Since its inception, the Foundation has worked for the full inclusion of people with epilepsy in everyday, mainstream activities by dispelling the stigma associated with seizures and supporting the development of laws that protect individuals from discrimination based on these stereotypes and fears.

HalfthePlanet Foundation supports the applications of technology to promote the values of the Americans with Disabilities Act: independent living, social inclusion, equality of opportunity, economic self-sufficiency and empowerment. The vision of HalfthePlanet Foundation is a planet: where technology pervasively facilitates the dreams, aspirations, expectations and abilities of children and adults with disabilities, their families and friends; where everyone can contribute fully to the economic, social, and political well being of our local, national, international and virtual communities; and that fully recognizes and respects the civil and human rights of all its citizens, especially its citizens with disabilities.

Justice For All is a national disability rights organization whose goal is to defend and advance the full civil and human rights of Americans with disabilities.

The **Learning Disabilities Association of America** (LDA), is a national, non-profit, volunteer organization whose members are individuals with learning disabilities, their families and friends, and professionals. LDA is dedicated to enhancing the quality of life for all individuals with learning disabilities, to alleviating the restricting

effects of learning disabilities, and to supporting endeavors to determine the causes of learning disabilities.

The **National Alliance for the Mentally Ill** (NAMI), with more than 200,000 members and 1,300 state and local affiliates, is the Nation's leading grassroots advocacy organization dedicated exclusively to improving the lives of persons with severe mental illnesses.

The **National Association for the Advancement of Orthotics and Prosthetics** is a national non-profit trade association comprised of orthotists and prosthetists who design, fit and fabricate orthopedic braces and artificial limbs to meet the unique needs of millions of people with amputations and orthopedic impairments.

The **National Association of Developmental Disabilities Councils** (NADDC) represents approximately 40 Developmental Disabilities Councils around the country. NADDC's mission is to provide support and assistance to member Councils to promote a consumer and family centered system of services and supports.

The **National Association of Protection and Advocacy Systems** (NAPAS) is the membership organization for the nationwide system of protection and advocacy (P&A) agencies. Located in all 50 states, the District of Columbia, Puerto Rico, and the territories, P&As are mandated under various federal statutes to provide legal representation and related advocacy services on behalf of all persons with disabilities in a variety of settings. The P&A system comprises the nation's largest provider of legally based advocacy services for persons with disabilities.

The **National Center on Accessibility** (NCA) provides education and technical assistance and conducts research on accessibility for people with disabilities in parks, recreation and tourism.

The **National Council on Independent Living** (NCIL) is a membership organization that advances the independent living philosophy and advocates for the human rights of, and services for, people with disabilities to further their full integration and participation in society. NCIL was established in 1982 and is the leading national, cross disability, grassroots organization run by and for people with disabilities.

National Federation of the Blind (NFB) is the leading national organization of blind persons, with affiliates in all 50 states, the District of Columbia and Puerto Rico. Most of its approximately 50,000 members are blind. NFB is recognized by the public, Congress, governmental agencies, and the courts as a collective and representative voice of blind Americans and their families. NFB promotes the general welfare of the blind by (1) assisting the blind to integrate themselves into society on terms of equality and (2) removing barriers and changing social attitudes, stereotypes and mistaken beliefs concerning blindness that are held by sighted and blind persons and that result in the denial of opportunity to blind persons in virtually every sphere of life.

The **National Health Law Program** is a non-profit, legal support center that works to improve justice in health care for low income people, people with disabilities, children, and people of color. For over 30 years, the National Health Law Program has worked on behalf of

these populations to assure that they receive the full protection of federal and state laws designed to ensure and expand access to health care services.

The **National Mental Health Association**, is a national organization with over 330 affiliates dedicated to promoting mental health, preventing mental disorders, and achieving victory over mental illness, as well as respect, dignity, and opportunities for persons with disabilities.

The **National Multiple Sclerosis Society**, with over 600,000 members and 83 chapters and divisions, is dedicated to ending the devastating effects of multiple sclerosis (MS). The Society focuses on providing services, information, and programs to persons with MS and funding for MS biomedical research and health services research. The Society supports efforts to increase accessibility and independence, as well as to prevent discrimination.

The **National Therapeutic Recreation Society** (NTRS) is a membership organization for those who are interested in the provision of therapeutic recreation services for persons with disabilities in clinical facilities and in the community. The National Therapeutic Recreation Society advocates for the leisure rights of individuals with illnesses, disabilities, and other conditions, and actively seeks to correct inequities that unjustly discriminate. **Paralyzed Veterans of America** (PVA) is a congressionally chartered veterans service organization with over 19,000 members. Virtually all of PVA's members use wheelchairs for mobility and are people with disabilities as defined by the Americans with Disabilities Act. PVA

has a vibrant sports and recreation program that involves many of its members.

The **Polio Society** serves its nationwide membership with information and referral services, training in self-advocacy to enforce the civil rights of persons with disabilities, and support for legislation of benefit to polio survivors and the disability community at large. Polio Society members are persons with disabilities as a result of polio and post-polio syndrome.

Self Help for Hard of Hearing People (SHHH) is a nonprofit consumer educational organization, founded in 1979 and devoted to the welfare and interests of those who cannot hear well, their relatives, and friends. SHHH has 20,000 national and chapter members in 50 states. It is the largest consumer organization in the United States representing people with hearing loss. As the voice for hard of hearing people, SHHH strives to improve the quality of life for hard of hearing people through education, advocacy, and self help.